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Report of the Secretary-General on the situation concerning Western Sahara

I. Introduction

1. The present report is submitted pursuant to Security Council resolution 1523 (2003) of 30 January 2004, by which the Council extended the mandate of the United Nations Mission for the Referendum in Western Sahara (MINURSO) until 30 April 2004 and requested me to provide a report on the situation before that date. This report covers developments since my last report, dated 19 January 2004 (S/2004/39).

II. Activities of my Personal Envoy

2. During the reporting period, and following his meeting on 23 December 2003 with a Moroccan delegation, my Personal Envoy held two meetings with delegations from Morocco on 2 April and 15 April 2004 to discuss issues pertaining to Morocco's final response to the operative paragraphs of resolution 1495 (2003) of 31 July 2003. He also met with a delegation from the Frente POLISARIO on 31 March 2004.

3. As the Security Council might recall, the Peace Plan for Self-Determination of the People of Western Sahara (S/2003/565, annex II) had been developed pursuant to the request by the Security Council in its resolution 1429 (2002) of 30 July 2002 that further efforts be made to find a political solution to the conflict that provided for self-determination. The Peace Plan was delivered to the parties and the neighbouring countries during a visit to the region by my Personal Envoy early in January 2003. On 8 and 10 March 2003, the Frente POLISARIO and the Kingdom of Morocco informed me, respectively, about their objections to the Peace Plan (see S/2003/565, annex III). However, by its letter of 6 July 2003, the Frente POLISARIO officially accepted the Peace Plan.

4. During the meeting with my Personal Envoy on 15 April 2004, Morocco delivered its final response to the Peace Plan for Self-Determination of the People of Western Sahara, attached to a letter dated 9 April 2004 to my Personal Envoy from the Minister for Foreign Affairs and Cooperation of Morocco (annex I to the present report).

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Assessment of the activities of my Personal Envoy

5. As the Security Council will recall, by its resolution 1495 (2003), which was adopted unanimously, the Security Council expressed its support for the Peace Plan for Self-Determination of the People of Western Sahara as an optimum political solution on the basis of agreement between the parties. The Council also called upon the parties to work with the United Nations and with each other towards acceptance and implementation of the Peace Plan. However, while Morocco's final response to the Peace Plan expresses a willingness to continue to work to achieve a political solution to the conflict over Western Sahara, it also clearly states that an "autonomy-based political solution can only be final", which has adverse implications for self-determination, as called for in resolution 1429 (2002).

6. Since 1988, when the Secretary-General submitted the settlement proposals calling for a just and definitive solution of the question of Western Sahara by means of a ceasefire and the holding of a referendum of self-determination for the people of Western Sahara, the Security Council has been actively engaged in trying to find a solution to the conflict over Western Sahara. Both parties agreed to the settlement proposals in principle and subsequently to the implementation plan (the Settlement Plan, S/21360 and S/22464 and Corr.1) giving effect to these proposals. Although the ceasefire came into effect on 6 September 1991 and has since been respected by both sides, the referendum was never held despite efforts by MINURSO and successive Special Representatives, because of lack of cooperation over the years, by one or the other party, at different times (see S/2001/613, section III).

7. As the Council will recall, after a particularly long impasse in the identification process for voters in the referendum, in March 1997, I appointed James A. Baker III as my Personal Envoy and asked him to assess, together with the parties, the implementability of the Settlement Plan in its current form, or whether there were adjustments acceptable to the parties that would improve the chances of implementing it in the near future and, if not, to advise me on possible ways for resolving the conflict. As I recounted in detail in my report to the Security Council of 23 May 2003 (S/2003/565), in his efforts to either assist the parties to implement the Settlement Plan or find a political solution to the conflict acceptable to both of them, from March 1997 until the present, a period of over seven years, my Personal Envoy has held 14 formal meetings with the parties, together and separately, in the North African region, Europe and North America. During this period he has also met them informally, separately numerous times, both in North Africa and in Houston.

8. In my report of February 2002 (S/2002/178), I informed the Security Council that, despite their assertions to the contrary, the parties had not been willing to fully cooperate with the United Nations either in the implementation of the Settlement Plan or to try to negotiate a political solution that would bring about an early, durable and agreed resolution of their dispute over Western Sahara. Owing to the parties' incompatible positions with respect to two proposals which my Personal Envoy had put forward to them, the draft framework agreement, which was favoured by Morocco, and the proposal to consider a division of the Territory, which was favoured by Algeria and the Frente POLISARIO, I presented four options for the consideration of the Security Council, which would not have required the concurrence of the parties.

9. As a first option, the United Nations could have resumed its efforts to implement the Settlement Plan without requiring the concurrence of both parties before action could be taken. This effort would have begun with the appeals process, but, even under this non-consensual approach, the United Nations in the years ahead would have faced most of the problems and obstacles that it had faced in the preceding ten years. In that connection, Morocco had expressed its unwillingness to go forward with the Settlement Plan; in addition, the United Nations might not be able to hold a free and fair referendum the results of which would be accepted by both sides; and there would still be no mechanism to enforce the results of the referendum. Under this option, the Identification Commission of MINURSO would have been reinforced, and indeed the overall size of the operation would have been increased.

10. As a second option, my Personal Envoy could have undertaken to revise the draft framework agreement, taking into account the concerns expressed by the parties and others with experience in such documents. However, in that event, my Personal Envoy would not have sought the concurrence of the parties, as had been done in the past with respect to the Settlement Plan and the draft framework agreement. The revised framework agreement would have been submitted to the Security Council, which would then have presented it to the parties on a non-negotiable basis. If the Council had agreed to this option, the composition of MINURSO might have been reduced.

11. As a third option, the Security Council could have asked my Personal Envoy to explore with the parties one final time whether or not they were willing to discuss, under his auspices, directly or through proximity talks, a possible division of the Territory, with the understanding that nothing would be decided until everything was decided. Under that option, in the event that the parties had been unwilling or unable to agree upon a division of the Territory by 1 November 2002, my Personal Envoy would have been asked to show to the parties a proposal for division of the Territory that would also have been submitted to the Council. The Council would then have presented the proposal to the parties on a non-negotiable basis. Such an approach to a political solution would have given each party some, but not all, of what it wanted and would have followed the precedent, but not necessarily the same territorial arrangements, of the division agreed to in 1976 between Morocco and Mauritania. If the Council had chosen this option, MINURSO could have been maintained at its present size or with its composition reduced.

12. As a fourth option, the Security Council could have decided to terminate MINURSO, thereby recognizing and acknowledging that, after the passage of more than 11 years and the expenditure of over half a billion dollars, the United Nations was not going to solve the problem of Western Sahara without requiring that one or both of the parties do something that they would not voluntarily agree to do.

13. The Security Council was not able to agree on any of the options. Instead, by its resolution 1429 (2002), it expressed its continued strong support for my efforts and those of my Personal Envoy to find a political solution to this long-standing dispute, and invited my Personal Envoy to pursue those efforts, taking into account the concerns expressed by the parties. The Council expressed its readiness to consider any approach providing for self-determination that might be proposed by me and my Personal Envoy, consulting, as appropriate, others with relevant

experience. The Council also called upon the parties and the States in the region to cooperate fully with me and my Personal Envoy in that regard.

14. Pursuant to that request, my Personal Envoy, assisted by a constitutional expert, drafted the Peace Plan for Self-Determination of the People of Western Sahara. I presented the Peace Plan to the Security Council in my report of 23 May 2003 (S/2003/565, annex II), as a fifth option, in addition to the four that had been described in my report of 19 February 2002. I recommended at that time that the Security Council endorse the Peace Plan as a fair and balanced approach which, following a transitional period of self-government, would offer the bona fide residents of Western Sahara an opportunity to determine their future themselves.

15. By its resolution 1495 (2003), acting under Chapter VI of the Charter of the United Nations, the Security Council unanimously expressed its support for the Peace Plan for Self-Determination of the People of Western Sahara as an optimum political solution on the basis of agreement between the parties and called upon the parties to work with the United Nations and with each other towards its acceptance and implementation.

III. Developments on the ground

A. Activities of my Special Representative

16. In February 2004, I asked my Special Representative for Western Sahara, Alvaro de Soto, to head my mission of good offices mission in Cyprus, in his capacity as my Special Adviser on Cyprus. In the meantime, the Force Commander of MINURSO, Major General Gyorgy Száraz (Hungary) has been acting as Officer-in-Charge of the Mission.

B. Activities of the military component

17. Owing to seasonal rotations, as at 19 April 2004 the military component of MINURSO stood at 227 United Nations military observers and troops, against the authorized strength of 230 (see annex II). The military component continued to monitor the ceasefire in Western Sahara. The Mission's area of responsibility has remained calm and there have been no indications on the ground that either side intends to resume hostilities in the near future.

18. During the reporting period, MINURSO conducted over 1,924 ground patrols and 152 air patrols to visit and inspect ground units larger than company size of the Royal Moroccan Army and the military forces of the Frente POLISARIO, in accordance with the ceasefire agreements between MINURSO on the one hand, and the Royal Moroccan Army and the Frente POLISARIO on the other. The military forces of both the Royal Moroccan Army and the Frente POLISARIO have continued to carry out routine maintenance and training activities.

19. The Frente POLISARIO still imposes some limitations on the Mission's freedom of movement in areas of the Territory east of the berm. Although the nature of the limitations does not significantly affect the ability of MINURSO to monitor the situation in those areas, their removal would further facilitate the Mission's ground and air patrolling activities.

20. MINURSO cooperated with the parties on the marking and disposal of mines and unexploded ordnance. In the past three months, the Mission has discovered and marked 82 mines and pieces of unexploded ordnance on both sides of the berm and has monitored 11 disposal operations carried out by the Royal Moroccan Army and the Frente POLISARIO. Since 1997, MINURSO has cooperated with the parties in discovering and marking a total of 1,123 mines and pieces of unexploded ordnance, as well as in 750 disposal operations.

C. Logistical aspects

21. MINURSO continued the phased implementation of its two-year plan to refurbish worn-out living and working quarters at all 10 MINURSO weather haven team site camps across the Territory. The refurbishment plan, which began in 2003, is currently 75 per cent complete. Additional communication equipment is being installed at the Smara (North) and Dakhla (South) sector headquarters. New patrol vehicles have been received and are being fitted with VHF/HF and GPS systems.

D. Prisoners of war, other detainees and persons unaccounted for

22. Owing to the mediation of a Member State, the Frente POLISARIO announced on 13 February 2004 the release of a further 100 Moroccan prisoners of war, who were subsequently repatriated to Morocco under the auspices of the International Committee of the Red Cross (ICRC). While I welcome this step, 514 such prisoners are still in detention, some of them for more than 20 years. I therefore reiterate my call to the Frente POLISARIO to expedite the release of all remaining prisoners, in compliance with international humanitarian law and numerous Security Council resolutions and presidential statements. I also call on both Morocco and the Frente POLISARIO to continue to cooperate with ICRC in accounting for those who are still missing in relation to the conflict.

E. Western Saharan refugees

23. The World Food Programme (WFP) and the Office of the United Nations High Commissioner for Refugees (UNHCR) undertook a joint assessment mission to the Tindouf area refugee camps in January 2004. Representatives of nine Member States, both current and potential donors, also took part in the assessment. Despite improvements in recent months due to increased donor support, the food situation in the refugee camps remains unstable. Unless additional relief supplies are available, refugees may start facing a shortage of cereals in May 2004, and a shortage of other essential commodities a month later. Urgent contributions to UNHCR and WFP assistance programmes are therefore required in order to overcome the foreseen shortages. I call on the donor community to respond generously to these appeals.

F. Confidence-building measures

24. It will be recalled that the Office of the United Nations High Commissioner for Refugees and my Special Representative for Western Sahara have promoted with the parties the implementation of the confidence-building measures. The aim of the

measures is to facilitate person-to-person contacts between the refugees in the Tindouf area refugee camps in Algeria and their communities of origin in Western Sahara. As noted in my previous report to the Council, a revised version of the UNHCR plan of action was submitted to the parties in December 2003 for their final consideration. Late in January and early in February 2004, the parties, and Algeria as the country of asylum, communicated their approval of the revised plan of action.

Exchange of family visits

25. I am pleased to report that the first exchange of family visits — between Western Saharan refugees living in the Tindouf area refugee camps in Algeria and their relatives in the town of Laayoune in the Territory — commenced successfully on 5 March 2004. During this first exchange, 21 refugees were transported aboard a MINURSO flight from Tindouf to Laayoune, and 19 Saharans were transported from Laayoune to Tindouf on the return flight. Despite some initial complaints by both parties at the outset of the exercise, the exchange of family visits has so far run smoothly, with the full cooperation of the parties, as well as Algeria, as country of asylum. To date, there have been five 5-day exchanges of visits between Laayoune and the Tindouf area camps, involving a total of 240 persons from both sides.

26. The first exchange of family visits was conducted on 9 April 2004, between the town of Dakhla in the Territory and the Tindouf area camps, involving a total of 50 persons from both sides. The exchange of visits will soon shift to other locations in the Territory on a rotational basis.

27. As at 31 March 2004, applicants to the exchange programme had exceeded 8,500 persons, including 2,850 from the Territory registered in Laayoune, and 5,650 from the Tindouf area refugee camps. Most of the applicants were found to meet the humanitarian and vulnerability criteria established by UNHCR for this activity. As initially planned, the programme will be pursued for six months on the basis of weekly flights and will be reviewed regularly and adjusted as required.

28. In order to ensure the success of this exercise, MINURSO is currently providing UNHCR with full logistic support, including both air and ground means of transport, as well as office and communications equipment. A memorandum of understanding between MINURSO and UNHCR defining their respective operational and financial contributions to the programme is being finalized.

29. In accordance with the UNHCR revised plan of action, four civilian police officers were deployed to MINURSO as from 11 March as part of the Mission's support for the exchange of family visits. The civilian police officers are performing an important role in escorting flights carrying visitors to and from the Territory and the Tindouf area refugee camps, monitoring and facilitating airport checks at the arrival and departure points, and assisting visitors in the registration and completion of travel formalities. Two additional civilian police officers are expected to be deployed shortly to the Mission area to assist in these activities.

30. In the light of the positive developments emerging from the first phase of the family visits, UNHCR, with the full support of MINURSO, hopes to carry on with this programme for an initial period of six months, to be reviewed thereafter in consultation with the parties. I would like to urge the parties to continue to extend their cooperation to UNHCR and MINURSO for the smooth implementation of the family visits. It is my hope that the parties will respond positively to the call of

UNHCR to preserve their exclusive humanitarian character. Meanwhile, I would like to join UNHCR in appealing to donor countries for urgent contributions for the implementation of family visits, which require a great deal of logistical, monitoring and administrative resources.

Telephone service

31. The telephone service linking the 27 February School in Tindouf with the Territory, which was resumed on 12 January 2004, has continued to function, and more than 2,000 refugees have benefited from the service. Work is currently under way to extend the telephone service to other locations in the Tindouf area camps. MINURSO is currently assisting UNHCR by providing the equipment and installing a second small telephone station in Al Ayoun camp in the Tindouf area, which is expected to be operational shortly.

Mail service

32. While the Moroccan authorities have recently notified UNHCR of their wish to pursue discussions in the near future with regard to the mail service between the Territory and the Tindouf area refugee camps, no significant progress has been achieved on this important element of the confidence-building measures since my last report to the Security Council. UNHCR remains ready to implement this service in accordance with the modalities it had initially proposed or under any other terms that would ensure the approval of all concerned.

G. African Union

33. During the reporting period, the observer delegation of the African Union to MINURSO, led by its Senior Representative, Ambassador Yilma Tadesse (Ethiopia), continued to provide valuable support and cooperation to the Mission. I wish to reiterate my sincere appreciation for this contribution.

H. Financial aspects

34. By its resolution 57/331 of 18 June 2003, the General Assembly appropriated an amount of $41,529,500 (gross), equivalent to $3,460,792 per month, for the maintenance of MINURSO for the period from 1 July 2003 to 30 June 2004. The assessment of these amounts is subject to the decision of the Security Council to extend the mandate of the Mission. Should the Security Council decide to extend the mandate of MINURSO beyond 30 April 2004, the cost of maintaining the Mission until 30 June 2004 would be limited to the monthly amounts approved by the General Assembly.

35. As at 31 March 2004, unpaid assessed contributions to the special account for MINURSO amounted to $45 million. The total outstanding assessed contributions for all peacekeeping operations as at 31 March 2004 amounted to $1,175.1 million.

Enclosure

Reply of the Kingdom of Morocco to Mr. Baker's proposal entitled "Peace Plan for the Self-Determination of Western Sahara"

The Kingdom of Morocco has always supported the Secretary-General of the United Nations and his Personal Envoy in their effort to find a political solution based on a compromise between the two options provided for under the 1991 Settlement Plan, which turned out to be inapplicable.

When the Personal Envoy came to the conclusion that the plan was inapplicable, and recommended at the Berlin meeting, on 28 September 2000, to seek an alternative political solution, the Kingdom of Morocco immediately assured him of its support. Thus, in February 2001, Mr. Baker suggested that this solution be in the form of an autonomy status whereby the Kingdom of Morocco would be expected to offer "some devolution of authority for all inhabitants and former inhabitants of the territory that is genuine, substantial and in keeping with international norms". When the Personal Envoy, building on this initiative, submitted to the Security Council in June 2001, a draft framework agreement for autonomy, Morocco immediately expressed readiness to negotiate a final settlement with the other parties, on this basis.

The Kingdom of Morocco has never failed to honour its commitment to participate, in good faith, in the negotiations with a view to achieving a mutually acceptable political solution. Thus, it submitted, in due course, to the Personal Envoy, its observations which consist in a documented and critical analysis of his peace plan. In particular, Morocco noted that the architecture of this proposal goes against the legitimate interests of the Kingdom. It also noted that the said plan strays from the autonomy political solution that had been initially accepted by the Personal Envoy.

Notwithstanding these objections, the Kingdom of Morocco has pursued open dialogue with the Personal Envoy, in accordance with the recommendations contained in Security Council resolution 1495 (2003), dated 31 July 2003. Thus, on 17 September and 23 December 2003 and on 2 April 2004, meetings were held in Houston, during which fundamental issues relating to Morocco's reply were discussed.

This dialogue provided an opportunity for Morocco to specify those aspects of the proposed plan which the Kingdom considers as unacceptable, and to discuss the other issues, in view of the negotiations to be held by the parties, as called for by the Security Council in resolution 1495 (2003).

Morocco took a position which was determined in the light of the meaning given to the political solution, always presented as a compromise solution consisting of autonomy within the framework of Moroccan sovereignty. Thus, the population would be expected to manage its own local affairs, with the necessary safeguards, and without prejudice to the sovereignty prerogatives of the Kingdom of Morocco and its territorial integrity. Such autonomy, agreed to between the parties and the United Nations, would close the issue of self-determination and enhance the territorial stability of the States of the region.

Clearly, this autonomy-based political solution can only be final. This is why the Kingdom of Morocco cannot agree to a transitional period, marked by

uncertainty as to the final status of the territory. Such a transitional period, envisaged under the proposed peace plan of the Personal Envoy, is likely to usher in an era of insecurity and instability for the whole Maghreb. Consequently, and as far as the Kingdom is concerned, the final nature of the autonomy solution is not negotiable.

On the other hand, the autonomy solution, as agreed to by the parties and approved by the population, rules out, by definition, the possibility for the independence option to be submitted to the said population. It is, therefore, out of the question for Morocco to engage in negotiations with anyone over its sovereignty and territorial integrity.

Everyone would understand that Morocco, just like any other State, cannot accept a questioning which is likely to destabilize it and to challenge the most sacred principles which have, throughout history, founded its unity and safeguarded its perpetuity.

With these aspects ruled out from the Personal Envoy's proposal, the Kingdom of Morocco solemnly reaffirms its readiness to negotiate a final settlement through a viable autonomy status for the Sahara region, in the interest of peace and stability for all States of the Maghreb. This status will provide for exclusive competences for the region, along with the relevant bodies to enforce them.

It would be appropriate to take into account the process that has been initiated by the Kingdom in an effort to build a democratic and modern society which is firmly attached to its identity and which derives its richness from the combination of numerous elements, of which the Saharan culture is a major component. Similarly, we should draw on the experiences of countries which are geographically and culturally close to Morocco.

In this respect, Morocco is ready to enter into negotiations, at any time, with the other parties and with the United Nations, in order to achieve a mutually acceptable settlement to the longstanding dispute over Sahara.

Annex II

United Nations Mission for the Referendum in Western Sahara: contributions as at 19 April 2004

Country	*Military observers*[a]	*Force Commander*	*Troops*	*Civilian police*[b]	*Total*
Argentina	1				1
Austria	2				2
Bangladesh	8				8
China	19				19
Croatia	2				2
Egypt	19			1	20
El Salvador	5				5
France	25				25
Ghana	9		7		16
Greece	1				1
Guinea	5				5
Honduras	12				12
Hungary	7	1			8
Ireland	4				4
Italy	5				5
Kenya	10				10
Malaysia	13				13
Mongolia	3				3
Niger	0			3	3
Nigeria	8				8
Pakistan	7				7
Poland	1				1
Republic of Korea	0		20		20
Russian Federation	24				24
Sri Lanka	2				2
Uruguay	8				8
Total	**200**	**1**	**27**	**4**	**232**

[a] Authorized strength is 230.
[b] Authorized strength is 81.